

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

V.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
FINANCIAL PLANNING
CORPORATION,

Defendants.

Case No.: 3:12-CV-02164-GPC-JMA

ORDER APPROVING;

**SALE OF BORDERLAND
PROPERTY AND AUTHORITY TO
PAY BROKER'S COMMISSION**

[ECF No. 1680]

Before the Court is the Receiver's Motion for Approval of Sale of the Borderland Property and Authority to Pay Broker's Commission. ECF No. 1680. No opposition was filed. The Securities and Exchange Commission filed a notice of non-opposition to the motion on December 26, 2018. ECF No. 1685. Based upon a review of the moving papers and the applicable law, the Court **GRANTS** the Receiver's motion.

BACKGROUND

A. The SEC Enforcement Action

On January 21, 2016, the Court granted the SEC's motion for final judgment against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil

1 action against Defendant Schooler and Western Financial Planning Corporation
2 (“Western”) four years earlier, on account of their practice of defrauding investors into
3 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF
4 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,
5 with cash or through financing, and simultaneously formed one or more General
6 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at
7 10. Western then sold General Partnership units to investors and sold the undeveloped
8 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately
9 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

10 **B. The Decline of the General Partnership Assets**

11 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
12 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
13 2. Those professionals determined that the land was worth \$16,328,000 and that the net
14 appraised value (appraised value less outstanding balances on all mortgages) of the
15 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
16 total funds that the general partners had invested in the land. *Id.* The Receiver further
17 estimated that, based on the then-current appraised values of the land, the average GP
18 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

19 Three years later, soon after final judgment was entered, the Receiver moved for
20 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
21 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
22 that the aggregate value in the GP accounts had been steadily decreasing while litigation
23 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
24 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
25 reason to believe that the value of the Receivership would continue to drastically
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1 decrease through the end of 2016.¹ This decline, he noted, was due to three main factors:
2 (1) 14 of the 23 properties were not appreciating in value²; (2) the properties were not
3 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
4 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
5 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
6 the Receiver concluded, because the money being spent to hold the GP properties was
7 disproportionately high in relation to the value of the GP's real estate assets, the
8 Receivership was in a steady decline. *Id.*

9 In order to prevent the value of the Receivership from falling into further decline,
10 the Receiver proposed that the GP properties be sold in accordance with Court-approved
11 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
12 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
13 any given investors' direct property interest, was to initiate an orderly sale of the GP
14 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
15 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
16 *Id.* at 16.

17 **C. The Receiver's Motion for Orderly Sale**

18 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
19 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
20 investor-interveners — that is, those investors who were granted permission under Rule
21 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
22 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
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25 ¹ The Receiver provided the Court with projections that the Receivership would further decline to \$1.8
26 million by the end of 2016. Indeed, the Receiver's projection has since proved to be accurate. The Twentieth
27 Interim Status Report submitted by the Receiver indicates that the Receivership's current cash and cash
equivalent balance is \$666,113. ECF No. 1505 at 17.

28 ² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was about
\$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

1 process.³ ECF No. 1304.

2 In approving the Orderly Sale, the Court addressed and evaluated the concerns
3 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing
4 positions on whether the Orderly Sale would benefit the Receivership estate. *See*
5 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon
6 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,
7 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration
8 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF
9 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the
10 Receiver on how to maximize the value of the Receivership estate and, for the most part,
11 agreed on the appraised value of the various GP properties. *Id.* As such, the Court
12 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera
13 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

14 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
15 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera
16 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.
17 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.
18 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a
19 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court
20 reviewed the Receiver's report and adopted the recommendations contained therein on
21 December 12, 2016. ECF No. 1423.

22 **D. Borderland Property**

23 The Borderland Property (the "Property") is approximately 34.45 acres of
24 undeveloped land in San Diego County, California. ECF No. 1680-1 at 2. The Property

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27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public sale
28 process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a modified
proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on August 30, 2016
(ECF No. 1359).

1 is one of the properties collectively known as the “Tecate” properties, all of which are
2 located in the San Diego Area. Prior to it being transferred to the Qualified Settlement
3 Fund Trust, the property was held by two General Partnerships – Borderland Partners and
4 Prosperity Partners. *Id.*

5 In 2013, the Receiver obtained an appraisal of the Property estimating the value to
6 be \$215,000. *Id.* at 3. In 2015, the Receiver obtained a two broker opinions of value for
7 the Property, the average of which was \$124,000. *Id.* In 2016, Xpera Group valued the
8 Property between \$346,000 and \$519,126; however the valuation based on the Property
9 being held for an indefinite period under San Diego County finalizes the development
10 plan in the area. *Id.* With the Court’s approval, the Receiver listed and marketed the
11 Property in May 2016 for \$300,000. *Id.* No offers were received for many months and
12 after consulting with Broker, the Received determined to gradually reduce the list price to
13 generate more interest in the Property. *Id.* The list price was gradually reduced until it
14 reached \$169,000 at which time an offer was received by Victor Alejandro Toledo
15 Cordova and Ada Sarahu Toledo. *Id.* In accordance with the Court-approved modified
16 Orderly Sale procedures, *see generally* ECF Nos. 1309, 1359, the Receiver sent notice of
17 the offer to investors. ECF No. 1680-1 at 3. The Receiver and Buyer executed a Vacant
18 Land Purchase Agreement and Joint Escrow Instructions, which is subject to a qualified
19 overbid and this Court’s approval. *Id.* at 4. Buyer removed all contingencies—besides
20 Court approval—on December 6, 2018. *Id.*

21 On January 11, 2019, the Receiver notified the Court that no qualified overbids had
22 been received for the Property. ECF No. 1686.

23 **E. Conclusion**

24 The Court finds that the purchase price of \$164,000 is reasonable in light of the
25 fact that it is higher than the 2015 value estimate for the Property, the Property has been
26 thoroughly marketed over the past 29 months and the \$164,000 is the best and only offer
27 received. The Court is also satisfied that the Receiver has complied with the modified
28 Orderly Sale procedures. The Receiver’s notice of the sale adhered to the modified

1 Orderly Sale procedures—which require that notice of the sale be published “in the
2 county, state, or judicial district of the United States *wherein the realty is situated*,” 28
3 U.S.C. § 2002 (emphasis added)—by publishing notice in the San Diego Union-Tribune
4 and by providing notice to the investors. Accordingly, and given that no opposition to
5 the present Motion has been filed or raised, and no qualified overbid was received, the
6 Court **GRANTS** Receiver’s motion for approval of sale.

7 **ORDER**

8 The Motion for Approval of Sale of the Borderland Property and Authority to Pay
9 Broker’s Commission filed by Thomas C. Hebrank—the Court-appointed receiver for
10 First Financial Planning Corporation d/b/a Western Financial Planning Corporation
11 (“Western”), its subsidiaries, and the General Partnerships listed in Schedule 1 to the
12 Preliminary Injunction Order entered on March 13, 2013—having been reviewed and
13 considered by this Court, the Receiver having notified the Court that no qualified overbid
14 has been received, and for good cause appearing therefore, the Court finds as follows:

15 1. The Motion is granted;

16 2. The sale of the Property known as the Borderland Property, as described on
17 Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion, by
18 Thomas C. Hebrank to , is confirmed and approved;

19 3. The purchase price of \$164,000 (\$169,000 with a \$5,000 credit due to buyer
20 at closing) for the Borderland Property is confirmed and approved;

21 4. The Receiver is immediately authorized to complete the sale transaction,
22 including executing any and all documents as may be necessary and appropriate to do so;
23 and

24 5. Because a broker is representing the buyer, and pursuant to the Court-

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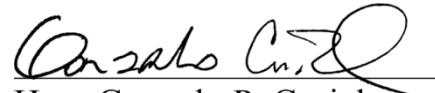
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1 approved listing agreement, a commission in the amount of 9% of the gross purchase
2 price is approved.

3 **IT IS SO ORDERED.**

4 Dated: January 28, 2019



5 Hon. Gonzalo P. Curiel
6 United States District Judge

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